$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 26th April, 2019
Pronounced on: 2nd May, 2019

\+ **LPA 73/2019 & CM APPL. 5152/2019**

SUMIT KUMAR SHARMA ..... Appellant
Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents
Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Parna, Advocates for MTNL.

\+ **LPA 25/2019 & CM APPL.1766/2019**

MANOJ SHARMA ..... Appellant
Through: Mr.Manish K.Bishnoi, Advocate.

versus

CYFUTURE INDIA PVT LTD & ANR ..... Respondents
Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Parna, Advocates for MTNL.

\+ **LPA 31/2019 & CM APPL.2135/2019**

TARUN KUMAR ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 76/2019 & CM APPL.5364/2019

SUJEET CHANDRA VERMA ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 77/2019 & CM APPL.5368/2019

SAVITA ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.

Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 78/2019 & CM APPL.5372/2019

BALRAJ SINGH DHIR ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 79/2019 & CM APPL.5375/2019

RAMESH CHAND ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 80/2019 & CM APPL.5378/2019

DEEPAK TANK ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 82/2019 & CM APPL.5423/2019

HARISH KUMAR ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 83/2019 & CM APPL.5428/2019

ROHIT KUMAR ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit

Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 121/2019 & CM APPL. 8743/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

RAKESH KUMAR PAL & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 134/2019 & CM APPL.9899/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

MIRZA NAFEES & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 135/2019 & CM APPL.9903/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

SUBHASH KUMAR RAY & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 137/2019 & CM APPL.9932/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

MANOJ BAN & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 138/2019 & CM APPL.9936/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

NILMANI SONU & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate.

Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 139/2019 & CM APPL.9940/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

SUMIT KUMAR SHARMA & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 140/2019 & CM APPL.9944/2019

M/S CYFUTURE L INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

VINAY KUMAR & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 141/2019 & CM APPL.9948/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

ROHIT KUMAR & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 142/2019 & CM APPL.9952/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

RAMESH CHAND & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 143/2019 & CM APPL.9956/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

SAVITA & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate.

Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 144/2019 & CM APPL.9960/2019

CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

BALRAJ SINGH DHIR & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 145/2019 & CM APPL.9964/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

MANOJ SHARMA & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 146/2019 & CM APPL.10024/2019

CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with

Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

MANISH KUMAR SINGH & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 147/2019 & CM APPL.10033/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

RAKESH KUMAR & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 148/2019 & CM APPL.10039/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

AMIT KUMAR & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal

Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 149/2019 & CM APPL.10044/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

LAL SINGH & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 150/2019 & CM APPL.10050/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

HARISH KUMAR ARYA & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 155/2019 & CM APPL.10119/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with

Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

DEEPAK TANK & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 156/2019 & CM APPL.10134/2019

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

SUJIT CHANDRA VERMA & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 195/2019 & CM APPL.12849/2019

CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

MANOJ KUMAR & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal

Singh & Ms.Ritu Pama, Advocates for MTNL.

+ **LPA 196/2019 & CM APPL.12855/2019**

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

TARUN KUMAR & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ **LPA 197/2019 & CM APPL.12911/2019**

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

SHAH ALAM & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate. Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ **LPA 198/2019 & CM APPL.12922/2019**

M/S CYFUTURE INDIA PVT LTD ..... Appellant

Through: Mr.Aditya K.Choudhary with

Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates.

versus

SHIVANI RANI & ORS ..... Respondents

Through: Mr.Manish K.Bishnoi, Advocate.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

+ LPA 23/2019 & CM APPL.1659/2019

MANISH KUMAR SINGH ..... Appellant

Through: Mr.Manish K.Bishnoi, Advocate.

versus

M/S CYFUTURE INDIA PVT LTD & ANR ..... Respondents

Through: Mr.Aditya K.Choudhary with Mr.Gurmehar Vaan Singh & Mr.Amit Pratap, Advocates for R1.
Mr.Saket Sikri with Mr.Ajay Pal Singh & Ms.Ritu Pama, Advocates for MTNL.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE I. S. MEHTA

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These 34 appeals are directed against the same impugned judgment dated 20th November, 2018 passed by the learned Single Judge in WP (C) No. 5685/2018 and are accordingly being disposed of by this common judgment.

2. Ten of the appeals are by the employees and the remaining 23 by the management, viz., M/s Cyfuture India Private Limited (hereafter 'CIPL').

Background facts

3. The employees were all working as Technical Support Executive (TSE) in the Internet Helpline Department of the Mahanagar Telephone Nigam Limited (MTNL) (Respondent No.2 in the employees' appeals) for broad band services having helpline No.1504. This was akin to call centre work. Their main work was to attend to complaints incidental to the telecommunication operations of MTNL. While the employees worked under the direct employment of CIPL, the arrangement was that MTNL would enter into fresh contracts with private parties for supply of workmen while the employees like the ten Appellants before this Court continued working for MTNL. CIPL is one such private company primarily engaged in the business of providing workmen.

4. It is not in dispute that 57% of the shares of MTNL are held by the Government of India. MTNL took out a tender dated 2nd May, 2016 for managing call centre services. CIPL successfully applied pursuant thereto and received a letter of intent-cum-Purchase Order dated 30th September, 2016 for managing the call centre in the MTNL's establishment. The terms of the tender stated *inter alia* that

> "The successful bidder shall comply with the provisions of all statutory provisions and the benefits admissible to the worker under various acts, schedules for minimum wages and other benefits payable as per relevant acts."

5. The case of the employees was that they were entitled to minimum wages in terms of the Minimum Wages Act, 1948 (MWA). Additionally in terms of Special Condition 16 appended to the contract, CIPL was liable to pay the workers minimum wages. The case of the employees was that they were in a 'Scheduled employment' with the MTNL. Further, since MTNL was a company incorporated by the Central Government it is the Central Government which is the 'appropriate Government' for the purposes of the MWA.

Question of law

6. The present appeals raise a short but interesting question of law: whether for the period between 19th January, 2017 and 3rd March, 2017, when the minimum wages payable under the MWA as fixed by the Central Government was higher than that fixed by the Government of the National Capital Territory of Delhi (GNCTD), the employees working for MTNL and under CIPL were entitled to the higher minimum wages? For this purpose, reliance is placed by the employees on a Gazette Notification dated 19th January, 2017 issued by the Government of India to which the reference will be made thereafter.

Claim before the RLC

7. Twenty-three employees of CIPL working at the call centre of MTNL approached the Regional Labour Commissioner (RLC) (Central), New Delhi with a petition under Section 20 (1) read with Section 20 (2) of the MWA, being MWA No. 61/2017 aggrieved by the denial of the excess minimum wages payable to them in terms of the rates fixed by the central government

under the aforementioned Gazette Notification dated 19th January, 2017. During the course of the hearing of the said petition on 9th January, 2018 a statement was made on behalf of CIPL agreeing to pay the excess amount of the minimum wages. A final order was thereafter passed by the RLC on 17th April, 2018 directing CIPL to pay the differential amount along with compensation which was twice the amount payable.

CIPL's writ petitions

8. Assailing the order dated 17th April, 2018 of the RLC *vis-a-vis* the 23 employees who approached the RLC, CIPL filed 23 writ petitions in this Court. By an interim order dated 27th July 2018, the learned Single Judge stayed the order of the RLC subject to the amount payable in terms thereof being deposited by CIPL with the Registrar General (RG) of this Court and the amount so deposited being kept in FDR initially for a period of six months with an auto renewal facility. On 6th September 2018, the learned Single Judge noted that the said amount was being deposited by CIPL with the RG during the course of the day. That amount has since continued in fixed deposit.

Impugned judgment of the Single Judge

9. The 23 writ petitions file by CIPL were disposed of by the learned Single Judge by the impugned common judgement dated 20th November, 2018 agreeing with CIPL that in law it was not obliged to pay the excess of the minimum wages fixed by the central government by the above notification dated 19th January 2017. The learned Single Judge that while in terms of the Central Government notification dated 19th January, 2017 the minimum

wages fixed by State Government was payable if it was higher that fixed thereunder by the Central Government, the 'vice versa' situation did not result. In other words, since the notification did not expressly say so, there was no obligation thereunder to pay the higher minimum wages fixed by the central government if that fixed by the State government was lower.

10. Yet, according to the learned Single Judge, CIPL could not wriggle out of the offer/undertaking made by it before the RLC on 9th January, 2018 since that undertaking was voluntary and not vitiated by any coercion, fraud etc. Accordingly, the learned Single Judge held that the impugned order of the RLC in so far as it levies compensation twice the amount of excess should be put on hold subject to the CIPL paying the workmen the excess amount within a period of twelve weeks, failing which the compensation as directed by the RLC would become payable. If CIPL paid the excess amount within twelve weeks then it would be relieved of paying compensation.

The present appeals

11. CIPL has filed 23 appeals against the impugned judgment of the learned Single Judge on the ground that in law it was not obliged at all to make any payment of the differential amount in terms of the notification dated 19th January, 2017 since that notification was, in the first place, not applicable to the contract governing the provision of services by the employees at the call centre.

12. Notice was issued in CIPL's appeals subject to CIPL depositing Rs.25,000 towards the litigation costs of the employees. This Coiurt further

directed that upon entering appearance, each employee would be released Rs. 1,000 towards costs of litigation. The said amount has since been deposited in this Court by CIPL.

13. Ten of the employees on their part have filed appeals to the extent that the learned Single Judge has relieved CIPL from paying twice the excess amount as compensation subject to terms. According to the employees this was the bare minimum compensation payable in terms of Section 20 (3) (i) of the MWA, under which the maximum compensation leviable could be as much as ten times the amount of excess.

14. This Court has heard the submissions of Mr. Manish K. Bishnoi, learned counsel appearing for the employees and Mr. Aditya Kumar Chaudhary, learned counsel appearing for CIPL.

Is the notification dated 19th January 2017 applicable?

15. The first question that requires to be considered is whether the impugned notification dated 19th January, 2017 issued by the Government of India applies to CIPL. The relevant portion of the said notification reads as under:

> "S.O. 188(E).—Whereas the draft proposal to revise the minimum rates of wages per day payable to the Schedule mentioned categories of employees engaged in the employment of "Construction of Maintenance of Roads or Runways or in Building Operations including laying down Underground Electric, Wireless, Radio, Television, Telephone, Telegraph and Overseas Communication Cables and similar other underground Cabling Work, Electric Lines, Water Supply Lines and Sewerage Pipe Lines" was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii) as required by clause (b) of sub-section (1) of section 5 of the Minimum

> Wages Act, 1948 (11 of 1948) vide notification of the Government of India in the Ministry of Labour and Employment number S.O. 2834 (E), dated the 1st September, 2016 for information and inviting objections and suggestions from all persons likely to be affected thereby, till the expiry of the period of two months from the date on which copies of the Gazette of India containing the said notification were made available to the public;"

16. There is a Schedule to the notification, Part -1 of which is titled 'basic minimum wages'. This is further sub-divided into categories of workers viz., unskilled, semi skilled/unskilled supervisory, skilled, clerical, highly skilled. Part II deals with certain other categories of workers, for the purposes of Dearness Allowance (DA), which is not immediately relevant for the purposes of these appeals.

17. The contention of Mr. Choudhary, learned counsel for CIPL, is that the services provided by CIPL are essentially IT and IT enabled services which are not expressly or impliedly covered by the said notification dated 19th January 2017. Mr. Bishnoi appearing for the employees, on the other hand, refers to the definition of 'scheduled employment' under Section 2 (g) read with the Schedule to the MWA and submits that the expression "any process or branch of work forming part of such employment" occurring in Section 2 (g) would include the call centre work which is incidental to the work of laying underground cables, which includes telephone, telegraphs and overseas communication cables. He also referred to Section 12 (2) of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act) read with Rule 25 (2) (iv) of the Contract Labour (Regulation and Abolition) Central Rules 1971 (CLAR Rules) mandating that CIPL to pay the minimum

wages in terms of the MWA.

18. The above submissions have been considered. The Court would first like to refer to the provisions of the MWA which are relevant for the issue at hand. Section 2 (b) MWA defines ‘appropriate Government’ and reads as under:

> “appropriate Government means-
>
> (i) in relation to nay scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oil-field or major port, or any corporation establishment by a Central Act, the Central Government, and
>
> (ii) in relation to any other scheduled employment the State Government.”

19. This has to be read with Section 2(g) MWA which reads thus:

> “(g) “scheduled employment” means an employment specified in the Schedule, or any process or branch of work forming part of such employment.”

20. The definition of ‘employee’ under Section 2 (i) is wide enough to include skilled or unskilled manual or clerical work performed by a person in a ‘scheduled employment’. The Schedule to the MWA specifically refers to ‘employment in laying of underground cables, electronic lines, water supply lines.....’ Section 27 of the MWA gives State Government power to add to the Schedule and also fixed the minimum pay and wages.

21. It can so happen, therefore, that for the same type of employment the

minimum wages fixed by the State Government could be more than that fixed by the Central Government and vice-versa. The notification dated 19th January, 2017 takes care of that contingency where it says in Clause 2(g) as under:

> "(g) where in any area the minimum rates of wages fixed by this notification are lower than the minimum rates of wages fixed by the State Government for employees of the aforesaid employments in relation to which the State Government is the appropriate Government, the rates of wages fixed by the State Government shall in respect of these areas, be deemed to be the minimum rates of wages payable under this notification."

22. The Court fails to understand why there should be a 'vice-versa' situation envisaged in the above notification. In other words, there is no need for the notification to state that where the minimum wages fixed by the notification is higher than the minimum wages fixed by the State Government, it is the minimum wages fixed by the notification that would be payable. That would be stating the obvious and is unnecessary. Such a clause would be redundant since in any event in such situation there can be no doubt that the notification applies. The notification obviously applies when it stipulates payment of minimum wages higher than that fixed by the State government for the same work.

23. The above position was not seriously disputed by counsel for the CIPL. It was for this reason he kept insisting that the notification itself does not apply. However, there appears to have been no such contention raised before the RLC as is evident from the following passage in the order dated 17th April 2018 of the RLC:

> "….The only dispute for which the present claim application was filed before this authority was the non-payment of minimum rates of wages to the applicant for the period from 19.1.2017 to 2.3.2017 as the rates notified by the State w.e.f 3.3.2017 was greater than the notification dated 19.1.2017 and was payable to the applicant by OP-1 without any dispute. Accordingly OP-1 was directed to submit a list reflecting the names of the persons who are eligible for payment of arrear at par with the applicable rate of notification dated 19.1.2017 so that a decision may be arrived in the issues involved after due argument as there was no need of leading evidence in the present case. The OP-1 filed the list as directed which was handed over to the applicants in question who accepted the factual position of the amount reflected in the list and admitted to receive the amount to be correct as per applicable minimum rates of wages"

24. Even the learned Single Judge appears to have focussed only on the issue whether the higher minimum wages payable under the notification dated 19th January 2017 was payable and not whether the said notification was at all applicable. Nevertheless, this Court hereafter proceeds to examine this contention raised by CIPL.

25. There is merit in the contention of the learned counsel for the employees that the expression 'any process or branch of work forming part of such employment' occurring in Section 2 (g) MWA should receive the widest interpretation.' A 'process' would include any work incidental to the main work and in the context of laying of underground cables including telephone, telegraph and overseas cables, it could involve a range of activities - unskilled, skilled, highly skilled or semi- skilled. For instance, the driver of a truck in which the cables are loaded would also be a person in

such employment, since that process is incidental to the main work of laying cables. There could be for instance work of clerks and typists in an office arranging for the requisitioning of the underground cables. There could be numerous such incidental tasks without which the work of laying of underground cables itself cannot be meaningfully performed. This explains the legislature's deliberate use of the words 'or any process or branch of work forming part of such employment' in defining 'scheduled employment' under Section 2 (g) MWA.

26. Turning to the notification itself, in the list of skilled, semi-skilled, highly skilled, clerical and unskilled workmen there is a very wide range of work involved. In the clerical category are included computer/data entry operators, telephone operators, typists and any other categories by whatever named called which are of clerical nature. Even in the highly skilled categories, there are Plumbers, Welders, Masons and Foreman etc. Clearly, therefore, the employees in the present case would fall in the clerical cadre of persons employed in connection with the main work of laying of underground cables.

27. As far as the Central Act is concerned, there is no doubt that in MTNL, a majority of the shares of the MTNL are held by the Central Government and therefore the appropriate Government could indeed be the Central Government and not GNCTD. There is no doubt that in the tender documents CIPL was required to quote prices 'Delhi Government's minimum wages' and in clause 23 of Section 4 of the Special Conditions Contract the rates of minimum wages under the category of 'graduates and

above" were stated as the rates prescribed by the Labour Department of Delhi Government under the MWA. The 'payment terms' under the letter dated 30th September 2016 by which CIPL was offered the work of providing workmen for the period 7th October, 2016 to 6th October, 2017 is titled 'payment terms' and states that the payment would be in terms of the 'Minimum Wages circular of Delhi Government'.

28. However, a deeper scrutiny of the document reveals that CIPL was obliged even contractually to pay the statutory minimum wages both in terms of the central MWA as well as the State amendments thereto. Clause 17 of the letter dated 30th September, 2016 states as under:

> "17. The Vendor will ensure that all labour laws are compiled including minimum wages PF, ESI, Bonus etc. User unit must ensure that there is no violation of any provision of NIT/Tender document."

29. Further Section 12 (2) of the CLRA Act mandates that as a condition of licence, minimum wages would be payable. It reads as under:

> " 12(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed."

30. This has to be read with Rule 25 (2) (i) of the CLRA Rules which reads thus:

> "25. Forms and terms and conditions of licence.—

(1) Every licence granted under sub-section (1) of section 12 shall be in Form VI. (2) Every licence granted under sub-rule (1) or renewed under rule 29 shall be subject to the following conditions, namely:

(i) to (iii)…..

(iv) the rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 (11 of 1948), for such employment where applicable and where the rates have been fixed by agreement, settlement or award, not less than the rates so fixed;

31. Thus clearly the MWA and the notification dated 19th January 2017 issued thereunder by the central government applied to the contract between MTNL and CIPL. The Court therefore is of the view that there is no merit in the contention of the learned counsel for CIPL that the notification dated 19th January, 2017 does not apply in the case on hand and that therefore CIPL was not obliged to pay the higher of the minimum wages fixed in terms thereof for the period from 19th January, 2017 till 3rd March, 2017 on which date the rates fixed by the GNCTD were again higher than those fixed by the Central Government.

32. This Court, therefore, is unable to concur with the view expressed by the learned Single Judge that in the absence of 'vice-versa' clause, CIPL was not obliged in terms of the notification dated 19th January, 2017 to pay the higher minimum wages stipulated thereunder.

CIPL's undertaking before the RLC

33. The Court notes that indeed CIPL had undertaken before the RLC to pay the excess minimum wages and this was recorded in the order dated 9th January 2018 of the RLC as under:

> "As directed during the proceedings on 09.10.2017, neither the workmen produced the bank statement for the period nor the employer and O.P. No. 1 produced the wages sheet for reconciliation. Both the parties requested for time for filing of such submission on the next date of hearing. However, during the course of discussion it is revealed that applicants are asking for difference of rates of Central Government and State Government w.e.f 19.01.2017 i.e. the date of notification. Applicants accepted that they are paid the minimum rates of wages as notified by GNCTD which was more than that of skilled rate of Central Government before 19.01.2017. Further the rates notified by GNCTD effective w.e.f 03.03.2017 is also higher than that of the skilled rate of Central Government effective from 19.01.2017. Needless to mention that the difference of two rates i.e. skill rates of Central Government of two rates i.e. skill rates of Central Government and Skilled/Clerical Graduate Rate of State Government for the period from 19.01.2017 to 02.03.2017 is under dispute. O.P. No. 1agreed to make payment of the same.
>
> In view of the above, O.P. No. 1 is advised to make a list reflecting such difference for the period from 19.01.2017 to 02.03.2017 and submit on the next date of hearing. The applicants are also ready to accept the same.
>
> Next date of hearing is fixed for 18.01.2018 at 3:30 PM."

34. The above order of the RLC records a voluntary undertaking of CIPL, which has not been resiled from by CIPL on the ground that it was given under coercion etc. Rightly, therefore, the learned Single Judge held that

CIPL was bound by the said undertaking. This is apart from the conclusion reached by this Court that CIPL is nevertheless bound in law to pay its employees working for MTNL the excess minimum wages under the notification dated 19th January 2017 of the central government.

Compensation under Section 20 (3) MWA

35. It is next contended by learned counsel for CIPL that notwithstanding that the CIPL may be required to pay the higher minimum wages in terms of the Central Government notification dated 19th January, 2017, there was no justification in requiring it to pay compensation as there was no deliberate failure on its part to make payment of the excess minimum wages.

36. In this connection it is necessary to refer to Section 21 MWA which refers to the maximum compensation amount payable to an employee who has not been paid the statutory minimum wages. This has to be read with Section 20 (3) thereof. The said provisions of the MWA read as under:

> "Section 20. Claims-
>
> (1)…
>
> (2)….
>
> (3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct-
>
> (i) in the case of a claim arising out of payment of less than the

minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees, and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application."

Section 21: Single application in respect of a number of employees.

(1) Subject to such rules as maybe prescribed, a single application may be presented under section 20 on behalf or in respect of any number of employees employed in the scheduled employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (3) of section 20 shall not exceed ten times the aggregate amount of such excess or ten rupees per head as the case may be.

(2) The Authority may deal with any number of separate pending applications presented under section 20 in respect of employees in the scheduled employments in respect of which minimum rates of wages have been fixed, as a single application presented under sub-section (1) of this section and the provisions of that sub-section shall apply accordingly."

37. It must be recalled that in the present case it was under Section 20(3) that the application was made by the employees. Under Section 21(1) the maximum compensation that can be awarded 'shall not exceed ten times the aggregate amount of such excess or ten rupees per head as the case may be.'

In the present case, the excess sum payable to each employee is not a substantial sum. It is just Rs.5,396/- for the period of over around 40 days between 19th January and 3rd March 2017. In the circumstances, the compensation amount at just twice the excess amount and which works out Rs.16,188/- can hardly be said to be excessive particularly considering that the maximum compensation payable is ten times the default amount. Moreover only 23 of the 350 odd workers approached the RLC and the directions issued by the RLC were confined to those 23 employees. Thus it cannot be said that any undue hardship was caused to CIPL, although that is not a relevant consideration considering that the obligation to pay minimum wages is a mandatory and statutory one.

Conclusions and directions

38. For all of the aforementioned reasons, the appeals filed by the CIPL are dismissed and the appeals filed by the employees are allowed. The applications are disposed of. The impugned order of the learned Single Judge is modified by directing that CIPL will be required to pay the 23 employees who approached the RLC the excess amount plus compensation as determined by the RLC.

39. Although only ten of the 23 employees have appealed to this Court, the benefit of the present judgment will enure to all the 23 employees who approached the RLC. It is accordingly directed that as far as the ten employees who have approached this Court with appeals are concerned, they will appear before the RG of this Court and upon being properly identified, the pro-rata amount payable to each of them in terms of the order of the

RLC together with interest accrued thereon shall be released forthwith by the RG. The RG will also ensure that each of the ten employees have received the litigation costs of Rs. 1,000 and, if not, will release such sum to each of them from the Rs.25,000 deposited in this Court by the CIPL for that purpose. The entire exercise of release of sums to the ten employees who have filed appeals in the above manner should be should be completed by the RG within the next three months and in any event not later than 1st August 2019.

40. The appeals be listed before the RG on 8th May 2019 for the above purpose.

41. The balance amount in the fixed deposit plus the balance litigation costs will thereafter be transferred by the RG to the RLC concerned. The remaining 13 of the 23 employees can appear before the RLC and collect their respective amounts upon proper identification.

S. MURALIDHAR, J.

I.S.MEHTA, J.

MAY 02, 2019

mw